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VENABLE, BAETJER, HOWARD AND CIVILETTI, LLP  
P.O. BOX 34385  
WASHINGTON DC 20043-9998

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AUG 16 2004

**OFFICE OF PETITIONS**

In re Application of  
Miller et al.  
Application No.10/733,647  
Filed: December 12, 2003  
Attorney Docket No. 29953-187825  
Title of Invention: Blow Cylinder with Fluid  
Cushion

DECISION REFUSING STATUS  
UNDER 37 CFR 1.47(a)

This is in response to the petition filed May 18, 2004, under 37 C.F.R. §1.47(a).

The petition under 37 C.F.R. §1.47(a) is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 C.F.R. §1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 C.F.R. §1.136(a).

The above-identified application was filed on December 12, 2003, without a signed oath or declaration. Accordingly, on March 19, 2004, a "Notice to File Missing Parts of Nonprovisional Application" was mailed requiring, for the purposes of this decision, an executed oath or declaration and a \$130.00 surcharge for its late filing.

In response, on May 18, 2004, the instant petition and accompanying fee, an executed declaration and \$130.00 surcharge fee were received.

A grantable petition under 37 C.F.R. §1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

The instant petition does not satisfy requirements (1).

As to item (1), Rule 47 applicant has failed to show that the non-signing inventor can not be reached. Rule 47 applicant states because inventor Miller has been called up to active duty in the Army Reserves on December 7, 2003 he cannot be reached by telephone or mail for

lengthy periods of time. However petitioner has failed to provide any evidence that "diligent effort" was made to contact inventor Miller or his legal representative. Instead petitioner has merely concluded that inventor Miller is not available. It is well established that people serving in the armed forces receive mail. Yet petitioner has not indicated that a copy of the application papers (specification, including claims, drawings, and oath or declaration) was presented to inventor Miller either at his home address or his temporary mailing address. Inventor Miller may have appointed a legal representative to handle any legal affairs while he is on active duty.

Thus rule 47 applicant has failed to provide sufficient evidence to establish inventor Miller is unavailable within the meaning of 37 CFR 1.47. Rule 47 applicant should make diligent effort to contact inventor Miller and have him execute the declaration. If inventor Miller cannot be reached, rule 47 applicant should provide documentary evidence that would support a finding that the non-signing inventor is unavailable.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

By facsimile: (703) 872-9306

By delivery service:  
(FedEx, UPS, DHL, etc.) U.S. Patent and Trademark Office  
220 20<sup>th</sup> Street S  
Customer Window, Mail Stop Petition  
Crystal Plaza Two, Lobby, Room 1B03  
Arlington, VA 22202

Telephone inquiries related to this decision may be directed to the undersigned at (703) 306-0251 until September 24, 2004 thereafter at (571) 272-3215.

*Charlema R. Grant*

Charlema R. Grant  
Petitions Attorney  
Office of Petitions